IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DOGLEG RIGHT PARTNERS, LP AND DOGLEG RIGHT CORPORATION, **Plaintiffs,** **vs.** **TAYLOR MADE GOLF COMPANY, INC.,** **Defendant.**	**Civil Action No. 2:07-CV-533-TJW/CE**

PLAINTIFFS' RESPONSE AND STIPULATION OF NO WILLFUL INFRINGEMENT

I. BACKGROUND

On March 22, 2011, the Court issued its "Memorandum Opinion and Order" on claim construction ("Claim Construction Order"). Doc. 103. The Claim Construction Order construed the phrase "said threadably attachable member having a weight user-repositionably secured thereon" to mean "the said threadably attachable member has a weight secured thereon such that the weight is detachable from the member to enable the user to move the weight to another location on the member or elsewhere within the shell." *Id.* at 32. This phrase appears only in Claim 1 of Plaintiffs' Patent No. 7,004,852 ("the '852 patent").

Defendant's accused products have weight cartridges that do not permit the user to detach a weight from a threadably attachable member. On March 23, 2011, counsel for Plaintiffs advised counsel for Defendant that, in view of the construction of the above-quoted phrase, Plaintiffs would enter into a stipulation of non-infringement, and proposed discussing the particulars of such stipulation. In the ensuing discussions and correspondence, Defendant's counsel did not advise Plaintiffs' counsel that Defendant would be filing a motion for summary judgment of no willful infringement. Had that information been provided to Plaintiffs' counsel, Plaintiffs would have offered to stipulate to no willful infringement because the only pre-suit notice letter sent to Defendant referenced only the '852 patent. As of the filing of this Response, counsel for the parties' have not yet agreed to the exact terms and language of the stipulation of non-infringement of the '852 patent, and its effect on Defendant's defenses and counterclaims and on the parties' respective appellate rights.

II. STIPULATION

1. In view of Plaintiffs' concession of non-infringement of U.S. Patent No. 7,004,852 ("the '852 Patent") based on the Court's claim construction [Doc. 103 at 32] of the

phrase "said threadably attachable member having a weight user-repositionably secured thereon," Plaintiffs hereby stipulate to the withdrawal of their claim of willful infringement of the remaining two patents in suit. Plaintiffs reserve their right to re-assert willful infringement should the above-referenced claim construction be reversed on appeal.

Dated: April 12, 2011.

Respectfully submitted,

/s/ Jim L. Flegle

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically on the 12th day of April, 2011, in compliance with the Court's Standing Order Designating Case for Enrollment in the Electronic Case Files "ECF" System and has been served on all counsel who have consented to electronic service and all other counsel by regular mail.

/s/ Jim L. Flegle
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